

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1113

East County Water Control District, Lee and Hendry Counties

SPONSOR(S): Kreegel

TIED BILLS:

IDEN./SIM. BILLS:

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	<u>Military & Local Affairs Policy Committee</u>	<u>12 Y, 0 N, As CS</u>	<u>Fudge</u>	<u>Hoagland</u>
2)	<u>Economic Development & Community Affairs Policy Council</u>	<u></u>	<u>Fudge</u>	<u>Tinker</u>
3)	<u></u>	<u></u>	<u></u>	<u></u>
4)	<u></u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The East County Water Control District, located in Lee County, was created in 1958 by judicial decree and extended to Hendry County by decree in 1961.

CS/HB 1113 amends the boundaries of the district to include approximately 179 acres and renames the Board of Supervisors to the Board of Commissioners. The bill provides that vacancies of the Board are filled pursuant to s. 189.405(3)(a), F.S. The Board may remove any member who has three consecutive, unexcused absences from regularly scheduled meetings, but must adopt policies defining excused and unexcused absences.

The bill is effective upon becoming law

Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. The provisions of House Rule 5.5(b) appear to apply to this bill.

There is a question as to whether this bill requires a three-fifths majority vote for passage by the Legislature. See section "III. Comments. A. Constitutional Issues."

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The East County Water Control District, located in Lee County, was created in 1958 by judicial decree and extended to Hendry County by decree in 1961.¹ The District encompasses over 63,000 acres of land and approximately 311 miles of canals. The district is controlled by a Board of Supervisors consisting of five members elected by the electors of the district. Vacancies on the Board are filled pursuant to s. 298.12, F.S., which requires the remaining Supervisors, or if they fail to act within 30 days, the Governor to fill such vacancy until the next annual meeting, when a successor is elected.

The District is authorized to levy annual installment and maintenance taxes. Section 197.3632, F.S., sets forth the requirements for the adoption of non-ad valorem assessments and requires notice at least 30 days prior to the district's public hearing on the adoption of the non-ad valorem assessment.

District Boundary Modification

Section 298.301, F.S., provides that when a water control district is created, or its authorities or boundaries amended, by special act, lands may be added to or deleted only through legislative modification of the special act.

Effect of Proposed Changes

HB 1113 expands the boundaries of the district to include two areas: Golden Palms comprised of 54.44 acres and The Grove comprised of 124.5 acres. The bill also renames the Board of Supervisors to the Board of Commissioners. Vacancies of the Board are filled pursuant to s. 189.405(3)(a), F.S. The bill provides that the Board may remove any member who has three consecutive, unexcused absences from regularly scheduled meetings, but must adopt policies defining excused and unexcused absences.²

B. SECTION DIRECTORY:

Section 1: Expands the boundaries of the district, provides for a board of commissioners in lieu of a board of supervisors, and provides penalties for unexcused absences.

¹ The decree was ratified by the Legislature in 1963. ch. 63-1549, L.O.F.

² This provision is identical to s. 191.005(5), F.S., relating to independent special fire control districts.

Section 2: Provides an effective date of upon becoming law

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 8, 2009.

WHERE? In the *News-Press* a daily and Sunday newspaper published in Lee and Hendry Counties.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Paragraph (21) of subsection 11(a) of Article III of the Florida Constitution prohibits special laws or general laws of local application pertaining to "any subject when prohibited by general law passed by a three-fifths vote of the membership of each house. Such law may be amended or repealed by like vote"³ Pursuant to this authority, s. 298.76, F.S., was adopted and prohibits any special law or general law of local application which grants additional authority, powers, rights, or privileges to any water control district formed pursuant to ch. 298, F.S. However, special or local laws may be enacted changing the method of voting⁴ or the term or qualifications of supervisors.⁵

Nevertheless, the district's special act requires that vacancies be filled in accordance with s. 298.12, F.S. This language provides that the remaining Supervisors, or if they fail to act within 30 days, the Governor, shall fill such vacancy until the next annual meeting, when a successor is elected. The bill seeks the authority to fill vacancies pursuant to s. 189.405(3)(a), F.S. which provides that "[i]f a multicounty special district has a popularly elected governing board, elections for the purpose of electing members to such board shall conform to the Florida Election Code, chapters 97-106." While this provision applies to all multicounty special districts, the East County Water Control District is subject to the more specific provisions of s. 298.12, F.S. Consequently, it appears that the bill, by changing the method for filling vacancies through special election, may grant an additional power to the district.

The law is unsettled regarding whether the "like vote" requirement to amend or repeal a law on a subject that was added to the prohibited subject list means that the amendment or repeal may be made (1) by any general or special law passed by a three-fifths vote; or (2) only by amending or repealing the underlying general bill that created the prohibited special law by a three-fifths vote. There is no case law on the issue and Florida attorneys general have come down on both sides of the issue.⁶

³ The *Local Policies and Procedures Manual* indicates that this concern may be partially alleviated by House Rule 5.5(b).

⁴ § 298.76(2), F.S.

⁵ § 298.76(3), F.S.

⁶ Op. Att'y Gen. 83-27 (May 5, 1983), Op. Att'y Gen. 69-80 (August 28, 1969).

This bill may or may not require a three-fifths vote to pass the Legislature.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Possible Exemption from General Law

As stated above, s. 298.12, F.S., provides the specific method for filling vacancies of water control districts. The bill seeks to fill vacancies pursuant to s. 189.405(3)(a), F.S. This appears to be an exemption from general law.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 19, 2009, the Military and Local Affairs Policy Committee adopted an amendment to correct a reference to statute and correct the title.